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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,729	11/06/2001	Anne Marie Holler	71603-8016.US01	9132
22918	7590	01/25/2010		
PERKINS COIE LLP				
P.O. BOX 1208				
SEATTLE, WA 98111-1208				
EXAMINER				
SHEER, CRISTINA O				
ART UNIT		PAPER NUMBER		
3685				
NOTIFICATION DATE		DELIVERY MODE		
01/25/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentprocurement@perkinscoie.com

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### Office Action Summary

**Application No.**

10/005,729

**Applicant(s)**

HOLLER ET AL.

**Examiner**

CRISTINA SHERR

**Art Unit**

3685

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 10-18, 20-23, 28-36, 38-41, and 46-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6-9, 19, 24-27, 37 and 42-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action is in response to Applicant's Amendment filed September 3, 2009. Claims 1-54 are currently pending in this case. Claims 1, 6-9, 19, 24-27, 37, and 42-45 are under examination.

### ***Response to Arguments***

2. Applicant's arguments filed September 23, 2009 have been fully considered but they are not persuasive.

3. The Affidavit filed on September 30, 2009 under 37 CFR 1.131 has been considered but is ineffective to overcome the Eylon reference (US 6,757,894). The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Eylon reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Also, antedating affidavits must contain facts showing a completion of "the invention" commensurate with the extent the invention is shown in the reference, whether or not it be a showing of the identical disclosure of the reference. Where it can be concluded that facts, offered in an affidavit in support of a general allegation of conception and reduction to practice of the invention, would persuade one of ordinary skill in the art to a reasonable certainty that the applicant possessed so much of the invention as to encompass the reference disclosure, then that showing should be

accepted as establishing prima facie a case of inventorship prior to the reference, sufficient for the purpose of overcoming the reference in an ex parte case. See *In re Shokal*, 242 F.2d 771, 44 CCPA at 859.

4. In this case, Applicant's Affidavit Table 1 recites, inter alia, an "Estream client". The Estream client is not found in the specification. Applicant's Table 1 recites ECM-LSM interaction, where ECM and LSM are not found in the specification. Specifically, the language of the claims in this case recites various means, such as "storage means", "means for receiving", "validation means", "caching means". The Affidavit refers to these means specifically as, for example, an "Estream client". The said Estream client is not found in the specification or in the claims of this case.

5. Thus, the content or facts of the Affidavit do not comport and are not commensurate with the disclosure of the instant application. Generally, Applicant has failed to demonstrate conception of requisite means and their interaction.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 6-9, 19, 24-27, 37, and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eylon et al (US 6,757,894) in view of Franco et al (US 6,687,745)

8. Regarding claim 1, 19 and 37 –

9. Eylon discloses a process for the delivery of server-based streamed applications and data to a client and the management of said streamed applications on a server, comprising the steps of:

providing application set storage means for persistently storing streamed application program sets on said server (e.g. fig 1, col 3 ln 40-45);

wherein said streamed application sets contain streamed application file pages (e.g. fig 2B);

wherein said streamed application file pages are read only; providing means for

receiving client requests for streamed application file pages (e.g. fig 1, col 5 ln 20-25);

wherein clients request streamed application file pages using a unique set of numbers common among all servers that store the particular streamed application file pages; and providing means for sending said requested streamed application file page to said client (e.g. col 5 ln 50-65).

10. Eylon does not disclose, but Franco does, providing validation means for validating whether a client has access privilege to a requested streamed application file page (e.g. col 23 ln 64 – col 34 ln 5)

11. It would be obvious to one of ordinary skill in the art to combine the teachings of Franco and Eylon as they are in the same field, and in order to obtain the efficiency of streamed application along with greater security.

12. Regarding claims 6-9, 24-27, and 42-45 –

13. Eylon discloses providing profiling means for profiling the access patterns of streamed application file pages, wherein said access patterns are sent to said client to

guide its prefetching of streamed application file pages and wherein said access patterns are used by said server to pre-package and compress groups of streamed application file pages; wherein a prepackaged group is sent to a client requesting pages within a set and wherein said access patterns are used by said server to perform prefetching of streamed application file pages for pushing to clients. (fig 6, col 5 In 54-65).

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Duso et al (US 5,892,915) discloses a system having client sending edit commands to server during transmission of continuous media from one clip in play list for editing the play list.

16. Oehrke et al (US 6,735,631) discloses a method and system for network redirecting.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRISTINA OWEN SHERR  
Examiner  
Art Unit 3685

/Calvin L Hewitt II/

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Supervisory Patent Examiner, Art Unit 3685